

AUG 25 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARY ELIZABETH SCHIPKE,

Defendant - Appellant.

No. 06-10135

D.C. No. CR-04-02195-JMR

MEMORANDUM *

Appeal from the United States District Court
for the District of Arizona
John M. Roll, District Judge, Presiding

Submitted August 11, 2008**
San Francisco, California

Before: SILER, *** McKEOWN and CALLAHAN, Circuit Judges,

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

*** The Honorable Eugene E. Siler, Jr., Senior United States Circuit Judge for the Sixth Circuit, sitting by designation.

Mary Schipke (“Schipke”) appeals her conviction for threatening the use of a weapon of mass destruction in violation of 18 U.S.C. § 2332a(a)(3). The facts are known to the parties and need not be repeated here.

1. The district court did not err in its instruction to the jury on the intent requirement for a “true threat” under 18 U.S.C. § 2332a(a)(3). As Schipke had requested, the court’s “true threat” instruction focused on her subjective intent and incorporated the definition of a “true threat” from the Supreme Court’s decision in Virginia v. Black, 538 U.S. 343, 359-60 (2003). Although the district court did not incorporate Schipke’s entire proposed instruction, she is not entitled to an instruction using precisely the words she wants as long as the instruction is legally correct. See United States v. Marks, 530 F.3d 799, 809 (9th Cir. 2008) (citation omitted).

2. The government introduced sufficient evidence at trial that Schipke threatened to use a destructive device against property leased by the United States. See 18 U.S.C. § 2332a(a)(3). Several witnesses testified that Schipke threatened to detonate a bomb at the Oracle Post Office, which is located in a building leased by the federal government.

3. Schipke's rights under the Speedy Trial Act, 18 U.S.C. § 3161, were not violated. Schipke has failed to show that more than seventy non-excluded days elapsed between her indictment and the start of her trial.

4. The district court properly found that Schipke's conduct satisfied the motivational element of U.S.S.G. § 3A1.4 because her actions were "calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct." See U.S.S.G. § 3A1.4 cmt. n.1 (incorporating definition of "federal crime of terrorism" from 18 U.S.C. § 2332b(g)(5)).

5. Finally, a review of the district court's sentencing hearing indicates that it considered the factors set forth in 18 U.S.C. § 3553(a). Schipke has failed to show that the district court's decision to depart from an advisory guideline range of 210-262 months and impose a sentence of 48 months was an abuse of discretion. See United States v. Carty, 520 F.3d 984, 991-92 (9th Cir. 2008) (en banc).

For each of these reasons, the judgment of the district court is AFFIRMED.